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Decriminalising Consensual Adolescent Relationships: The need for Romeo-Juliet exception under POCSO

BHUMIKA BATRA¹

ABSTRACT

The Protection of Children from Sexual Offences (POCSO) Act, 2012, was enacted to protect children from sexual exploitation and abuse. However, one of its major drawbacks is its failure to distinguish between consensual sexual activity between adolescents and abusive or coercive acts. Sections 29 and 30 of the POCSO Act impose a presumption of guilt and severe punishment for any sexual activity involving minors, irrespective of consent. This paper explores the need for a "Romeo-Juliet" exception under the POCSO Act, which would decriminalize consensual relationships between adolescents who are close in age. The study highlights how the broad provisions of Sections 29 and 30 inadvertently criminalize adolescents in mutual relationships, with no regard for their age or the consensual nature of the act. Through an examination of relevant case laws, the paper argues that the law's rigid application does not align with the realities of adolescent relationships. It proposes introducing a close-in-age exception to prevent the criminalization of consensual acts while still protecting minors from exploitation. The research calls for a revision of the POCSO Act to incorporate this exception, along with a robust framework for sexual education that empowers adolescents with the knowledge to understand consent and relationships. The paper concludes by advocating for a balanced approach that protects minors while recognizing their autonomy in consensual relationships.

Keywords: Adolescent, Consensual relationship, Decriminalization, Sexual exploitation and Abuse, Romeo-Juliet clause

I. INTRODUCTION

The Protection of Children from Sexual Offences (POCSO) Act, 2012, in India aims to provide full legal protection to children under the age of 18 from sexual abuse, sexual exploitation, and sexual harassment.² The Act understands sexual exploitation as penetrative and non-penetrative

¹ Author is an LL.M. student at Amity University, India.

² Damodharan, D., Sravanti, L., KiragasuruMadegowda, R., & Sagar, J. V. (2021). The protection of children from sexual offences (pocso) act, 2012. Forensic Psychiatry In India, 66.

sexual assault, sexual harassment, and child pornography. However, as the Act's provisions are too wide and too inflexible, it has been criticized for its handling of consensual sexual conduct among adolescents. While the intent of the Act is to protect vulnerable children from sexual abuse, its consequences in the realm of consensual sexual conduct, especially among minors, have been negative. Specifically, adolescents who engage in sexual activities with one another, in the absence of any exploitative or coercive conduct, are likely to be inappropriately criminalized. The most significant issue is the failure to differentiate between an abusive sexual act and a consensual sexual relationship among minors. No matter the circumstances or consent, any POCSO sexual activity involving a child constitutes an offense, and consequently, adolescents are criminalized for being in a sexual relationship.

Particularly contentious are sections 29 and 30 of the Act, which impose a presumption of guilt and set out punitive sanctions for violators. Even though section 29 states that a presumption of guilt exists once any individual is charged in accordance with the provisions of the Act, and section 30 explains the sanctions to be imposed for such acts, the provisions fail to consider the specifics of the relational dynamics between the parties concerned, and whether the parties are in fact both under the age of majority. This creates a paradoxical situation in which young people are involved in consensual sexual activity, and are legally treated the same way as active participants in sexual abuse, with far-reaching negative consequences, both legally and in terms of the psychosocial ramifications of the situation.³

A number of jurisdictions globally have a “Romeo-Juliet” exception which aims to provide a legal interpretation that draws a clear distinction between sexual arousal in the biological sense, which is a normal activity between young people and which, in fact, is legally acceptable, and, on the other hand, sexual violence, exploitation, or coercion in order to secure a legal relationship that is consensual. Under such paradigms, the aim is to relax the legal prohibitions on consensual relationships as long as the participants are close enough in age and, in addition, the relationship is consensual. The introduction of such an exception under the POCSO Act could assist in the legal void of ensuring that adolescents in consensual relationships would not be legally equated with those in abusive or exploitative relationships.⁴

The present paper seeks to examine the implications of the Application of the POCSO Act to consensual relationships between adolescents, in particular, the need for a Romeo and Juliet

³ Seth, R., & Srivastava, R. N. (2017). Child Sexual Abuse: Management and prevention, and protection of children from Sexual Offences (POCSO) Act. *Indian pediatrics*, 54(11), 949-953.

⁴ Dewhurst, K., Spenser, K., & Fido, D. (2025). Romeo & Juliet laws: investigating UK public perceptions of young consensual sex and the effects of age gaps and perpetrator and respondent gender. *The Journal of Sex Research*, 62(4), 542-554.

exception. While considering the legal scope of Sections 29 and 30 and relevant case laws, the present paper aims to advocate for the need to amend the POCSO Act, in context with the intricacies of adolescent relationships, and the need to guard the minors from potential exploitation and, at the same time, grant the adolescents the freedom and protective autonomy to engage in consensual activities. In addition, the present research advocates that the proposed amendments, combined with sexual education, would be a constructive means of promoting the protection of adolescents.

II. LITERATURE REVIEW

The scholarly debates concerning POCSO's criminalization of adolescent relationships highlight the conflicting tensions between the protection of children as a legal principle and the emerging autonomy of an adolescent as a person. The literature is deeply focused on the apprehensions surrounding legal and developmental frameworks of the concept of 'consent.' In this regard, Anchan et al. (2020) illustrate the conflicts associated with POCSO and state that although the POCSO Act recognizes the developmental relevance of adolescent relationships, the inflexible legal age cap (i.e. 18 years) unjustly leads to the criminalization of any sexual interaction between two adolescents, and in doing so, it causes mental and emotional disadvantages to the adolescents involved through the criminalization of the consensual sexual relations.⁵ POCSO's legal construction of an age bar is the center of most of the critiques concerning the lack of judicial discretion and Parwani (2023), in particular, critiques POCSO's legal construction for failing to account for the psychosocial maturity of children of a particular age.⁶ He explains that the rigid legal age limit in POCSO is problematic as it conflates consensual sexual relations with social exploitation and, therefore, justifies the legal system to treat all involved minors as victims of sexual violence and explicitly disregards the existence of consent, resulting in legal outcomes that are unjust. Sadiq also provides a review of the Indian age of consent debates in a comparative literature context.⁷

The authors describe the increase in legal difficulties stemming from consensual teenage relationships due to the extension of the age of consent from 16 to 18, in conjunction with the POCSO Act and the Criminal Law Amendment Act, 2013. This is particularly so when courts must reconcile legal mandates with social realities. This work significantly contrasts the

⁵ Anchan, V., Janardhana, N., & Kommu, J. V. S. (2021). POCSO Act, 2012: Consensual sex as a matter of tug of war between developmental need and legal obligation for the adolescents in India. *Indian journal of psychological medicine*, 43(2), 158-162.

⁶ Prem Vinod Parwani, *Revisiting Consent under POCSO: From a 'Fixed-Age' Rule to a 'Competence-Based' Standard*, 16 *NUJS Law Review* 2 (2023).

⁷ Sadiq, S. S., & Rai, D. N. *Prevention and Recovery Strategies for Children Affected by Sexual Abuse as Per PocsO Act in India*. Available at SSRN 5281728.

inflexible law of India with flexible normative law of Australia, New Zealand, and the United Kingdom, where the Close-in-Age Exemption (CIAE) policy laws prevent the criminalization of consensual relationships between individuals of similar ages.⁸

From these publications, the most contrasting element presents itself in how the authors juxtapose the assessments and the urgency of legal reform. On the extreme, Parwani advocates systemic reform of the legal structure by proposing amendments to the law that recognize, and take into consideration, the level of adolescent development and suggest the establishment of varying age of consent. Parwani notes the constructive possibility of a protective POCSO and a decrease of penalizing of consensual acts with a close in age or Romeo and Juliet exception.

At the same time, Anchan et al. describe the legal dilemmas and sociocultural tensions of the situation. In the Indian subcontinent, consensual relationships between minors are in contradiction with expectations from the family, the community, and the norms. Moreover, POCSO is often used to criminalize relationships that are socially disapproved of, even when there is no legal exploitation. This view of sociology says that there is no purely legal solution to the problem, and that the integration of family, police, and courts with the law, is of primary importance in the given culture.

While there is broad scholarly consensus on the need to amend the inflexibility of POCSO, there is divergence on form or limits of possible reforms. Some advocate reducing the age of consent to 16 to harmonize with other countries while still providing protective measures for younger minors. Others prefer a more differentiated position where consensual, age-proximate, and surrounding relationships would not be subject to criminal liability, but where the age of consent would still remain at 18, keeping a strong vertical rule for child protection.

A different and distinct line of literature examines responses from the judiciary regarding the challenges of POCSO. The recent Supreme Court directive to consider a Romeo-Juliet clause indicates legal awareness of the problem and coincides with the literature where reform is needed.⁹ The literature critiques the use of exceptional constitutional authority, such as Article 142, to prevent the overly punitive measures of POCSO as being and problematic and not a substitute for legislative reform that would formally acknowledge the existence of consensual relationships between minors.

⁸ Kanbur, N. (2021). Close-in-age exemption laws: focusing on the best interests of children and adolescents. *International Journal of Adolescent Medicine and Health*, 33(2), 20180143.

⁹ The Hindu. (2026, January 12). Consider Romeo-Juliet clause in POCSO to protect adolescent relationships, SC tells Centre. *The Hindu*. <https://www.thehindu.com/news/national/consider-romeo-juliet-clause-in-pocso-to-protect-adolescent-relationships-sc-tells-centre/article70495275.ece>

III. ANALYSIS

The POCSO Act was created to safeguard children, legally defined as those under 18, from sexual crimes. The Act criminalizes sexual activities related to a child, thereby establishing a strict liability system wherein it does not matter whether the other party is 18 years old or older. Section 3 of POCSO addresses the issue of sexual assault, which is considered a crime, while Section 5 addresses the crime of aggravated sexual assault, and Section 7 addresses the issue of sexual harassment. All of these sections are based on the idea that minors cannot legally consent to sexual activities. Having age as the primary condition for the applicability of the Act, Section 2(1)(d) explains that a child is any person who is less than 18 years old.

The provisions of Sections 29 and 30 are vital, yet controversial in the milieu of consensual adolescent relationships. In Section 29, POCSO provides that there is a presumption of a particular type of offense. In other words, the Act provides that for any offense under the POCSO Act, the court is legally obliged to presume that a case has been established, and the burden of proof is on the accused. This is a significant departure from the general principles of criminal law which are based on the presumption of innocence, thereby making it impossible for adolescents who fall under POCSO to take prescriptive consensual conduct as a key element in their defense.¹⁰

Section 30 details the punishments for sexual offences under the Act. For penetrative sexual assault, there is a minimum of three years of imprisonment, but the sentence could be even longer, including life imprisonment, depending on the details of the case. Given the protective nature of the law focused on children, the punishments do not differentiate between predatory behaviour and the mutual consensual relationships of teenagers.

This lack of legal flexibility has created friction within the judiciary. For a long time, the Supreme Court has been adamant that there can be no legal consent under the age of 18. In *Independent Thought v. Union of India (2017)*¹¹, the Supreme Court maintained the age of sexual consent in India at 18, and stated that even if there is consent, sexual relations with a person under the age of 18 is considered rape for the purposes of the Indian Penal Code and under the provisions of POCSO. The reasoning was that children under 18 do not have the capacity to consent, and the law must protect them, therefore placing the age of consent at 18. While this ruling reinforced the protection of children, it failed to consider the legal complications of two teenagers of a similar age engaging in sexual relations. It has been up to

¹⁰ Ondeng'e, L. A. (2021). A Critique of the Criminalisation of Consensual Sexual Interaction Between Adolescents in Comparative Jurisdictions. LLM Thesis, Universiteit Leiden.

¹¹ AIR 2018 SC (CRIMINAL) 229.

the courts to determine the legality of sexual relations that are consensual in the perception of the wider community.

This context explains the most recent changes to the law. In *State of Uttar Pradesh v. Anurudh & Anr.* (2026)¹², the Supreme Court of India noted that POCSO is being abused and misapplied to criminalize consensual relationships among adolescents, or in situations where parents or guardians file complaints against young couples (with a small age gap) in order to settle scores. The apex court suggested a 'Romeo and Juliet exemption' for POCSO, where POCSO could be amended to ensure that non-exploitative and consensual adolescent relationships are not criminalized, while still maintaining the protective core of the Act, so that consensual adolescent relationships would not be criminalized. The Court noted that the misuse of POCSO Act, when filed in cases of consensual relationships, suggests the structural unworkability of the Act in the context of consensual teenage relationships, and in the absence of predatory behavior, would still be in Relational PRED. This represents a significant change in the Courts approach to the application of POCSO. The Supreme Court's suggestions, while still upholding POCSO's core objective of child protection, acknowledges the reality that adolescents of similar age who engage in a consensual relationship ought not to be deemed offenders under the criminalising provisions of Section 30.

The policy of the court aligns with the comparative international legal frameworks, particularly those that provide close-in-age exceptions, such as the Romeo-and-Juliet laws in some American states and Canada's graded consent regime, where criminal liability is removed for sexual activities involving a minor and/or adjacent-age individuals. The High Courts have also been a part of this developing body of jurisprudence. The Allahabad High Court noted that POCSO could not be aimed at the criminalization of consensual romantic relationships, especially when there is no evidence of exploitation or be it such comments that reaffirm judicial actors see the law's unwanted reach toward consensual conduct.¹³ However, courts do not seem to have indiscriminately balanced every adolescent booked under POCSO. In some contentious cases, courts have denied bail or upheld the conviction, claiming the statute is rigid, particularly where the ages differ by a few years or where the a-legal facts of coercion or deception can be posited.

Additionally, the example of the Delhi High Court judgment relating to minor spouses

¹² Special Leave to Appeal (Crl.) No.10656 of 2025.

¹³ Upadhyay, S. (2025, May 7). POCSO Act not meant to criminalise consensual romantic relations: Allahabad High Court. LiveLaw. <https://www.livelaw.in/high-court/allahabad-high-court/allahabad-high-court-pocso-act-criminalise-consensual-romantic-relations-291560>

demonstrates judicial reluctance to create exceptions¹⁴. The court mentioned that the Parliament has set an age of consent and that there cannot be judicial exceptions such as near-adult consensual relationships. This cannot be done because, in a sense, the judge would be making the law. Judges cannot cross into the Parliament's domain, which is what is meant by separation of powers. This is the reason such judicial reforms are constrained.

Regardless of the differing judicial responses, the statements made by the Supreme Court suggest that there is a gradually increasing recognition that the existing statutory framework consisting of a single age of 18 for every child is likely to enact great injustices in the case of consensual sexual relationships between adolescents which do not involve elements of coercion and exploitation. In such cases, the court's proposed Romeo and Juliet provision may serve as a judicial stimulus for the Parliament to modify POCSO in such a manner as to introduce a close-in-age exemption or an age-differential provision that would be permissible adolescent sexual relationships along with a stringent provision on sexual exploitation.¹⁵

The need for statutory reform in this case overlaps with the criminal law framework on the age of consent, and more broadly the law and policy of adolescent autonomy, and the balance of protection versus over-criminalization in the case of consensual acts. This has been the position of the public legal order and the associated jurisprudence since the Supreme Court made these statements. These perspectives point out that the extreme misapplication of the POCSO Act results not only in punitive consequences for the consensual acts of teenagers but also in the undermining of the law's legitimacy and the access to the protective jurisdiction for minors who need protection.

IV. CASE FOR ROMEO JULIET EXCEPTION

In today's contemporary law, a Romeo-Juliet exception will, in most cases, apply to a close-in-age or peer-group exception that allows consensual sexual spinning of adolescents of a close age to be excepted from statutory rape and child sex offense laws. The underlying essence of such exceptions remains to ensure that adolescents of close-in-age who engage in consensual relationships should not face the severe ramifications of criminal laws meant to target predatory or exploitative adult behaviors. Under the POCSO Act, the enactment of a Romeo-Juliet exception would ensure that the protective aim of the law remains whilst not criminalizing

¹⁴ Thapliyal, N. (2025, November 20). Courts can't create exceptions for 'near-majority consensual relationships' when consent is irrelevant under POCSO Act: Delhi High Court. LiveLaw. <https://www.livelaw.in/high-court/delhi-high-court/pocso-act-consent-irrelevant-teenage-consensual-relationships-310589>

¹⁵ Muniu, J. (2023). A Critique of the Interpretation and Application of Section 8 of the Sexual Offences Act in 'Consensual Adolescent Sex': A Case for Child-friendly Approaches. Available at SSRN 5223756.

inappropriate adolescent behavior. The rationale of a close-in-age exception is both legal proportionality and developmental psychology. Adolescence is characterized by increased agency, an expansion in emotional relationships, and sexual curiosity. The legal framework that suggests all consensual sexual interactions involving an individual below the age of 18 are criminal, regardless of the age and maturity of the parties, is legally and ethically problematic, as it unjustly criminalizes a factor of adolescent relationships. The POCSO Act in India, as it currently stands, provides for no such exceptions and thus walks the fine line in facilitating situations where consensual adolescent relationships are the subject of litigation for some offense of, or in relation to, sex-penetrative assault or sexual harassment.¹⁶

Comparative legal systems offer several models for how close-in-age exceptions can be structured:

- In the United States, most jurisdictions (states and territories) implement Romeo–Juliet laws within their age-of-consent frameworks. While age of consent varies across states (typically 16–18), many states include provisions that exempt consensual sexual activity when the age difference between partners falls within a specified range. For example, in Texas, a consensual relationship between a 17-year-old and a partner up to three years older may not trigger a felony statutory rape charge. Similarly, in California, the law provides that if the age difference between partners is small (e.g., three years or less), a consensual sexual act may not constitute a felony. These laws strike a balance between protecting minors from exploitation by significantly older partners and avoiding penal sanctions against peers engaged in consensual relationships.¹⁷
- Canadian criminal law provides another instructive example. Canada’s Criminal Code establishes a close-in-age exception whereby consensual sexual activity is not an offence provided the younger partner is at least 12, the older partner is no more than two years older (12–13 age group), or no more than five years older (14–15 age group). This graduated approach reflects a recognition that a rigid age threshold does not adequately capture the realities of adolescent relationships, and that consensual intimacy among similarly aged adolescents should not automatically amount to criminal wrongdoing.
- In the United Kingdom, though the age of consent is uniformly 16, prosecutorial guidelines and judicial discretion often consider context—such as the nature of the

¹⁶ Arnold, L. (2015). The Romeo & Juliet Scenario in the Aftermath of *Johnson v. Superior Court*. *Sw. L. Rev.*, 45, 959.

¹⁷ Leenknecht, J., Put, J., & Veeckmans, K. (2020). Age limits in youth justice: a comparative and conceptual analysis. *Erasmus L. Rev.*, 13, 13.

relationship and age closeness—when assessing whether to pursue charges. While the UK does not have a codified Romeo–Juliet exception, legal practice and prosecutorial guidelines permit a degree of prosecutorial restraint in cases involving consensual adolescent relationships, ensuring protection is focused on exploitative conduct.¹⁸

The international case studies show that age proximity rules, or equivalent consideration in doctrine, can be enacted in the context of protective order legislation or age of consent laws, without compromising their primary goal of safeguarding the interests of minors. This may be the case in order to prevent, or at the very least limit, the extent to which the rural inner criminalization of social relationships and the imposition of a punitive moralism to unilaterally control social relationships and criminalization of social relationships, particularly within the rural. In the area of social control, the rural dominant unilaterally controls social relationships, particularly in the rural. The UN Committee on the Rights of the Child, in a human rights-oriented approach, has described the paradox of the protective order legislation and the regulations of age of consent laws and the delay of social maturity as the social order of the imposition of protective laws of social control. The legislation to the extent that it does not represent the formal social order of control does not constitute a criminalized social relationship. A Romeo-Juliet exception essentially criminalizes the failure to consider the non-exploitative consensual relationship within a socially proximate age. Introducing a Romeo–Juliet exception under the POCSO Act would not mean neglecting the protective aim of the law. Rather, it would allow for a more focused application of the law where the distinction between peer mutual consenting and abuse is more apparent. This could be done through the designation of a certain age gap (for example, two to four years) where sexual activity among adolescents is decriminalized and consensual, affording full protection under POCSO regarding exploitative sexual abuse in the case of widening age disparities or breach of trust.

V. CONCLUSION AND RECOMMENDATIONS

The Protection of Children from Sexual Offenses Act, 2012, was created with the intent of being protective of all minors, however, the overly punitive nature of the act in its current form ignores the more nuanced nature of adolescent, consensual sexual activity. Being overly rigid with the laws surrounding sexual interactions of minors will lead to the criminalization of the majority of interactions. This will lead to minors in relationships being criminalized unfairly, furthering the social, emotional, and psychological damage that the act was intended to protect. This indicates an urgent need for the Act to recognize emotional and psychological damage to minors

¹⁸ Youngs, R. (2014). *English, French & German Comparative Law*. Routledge.

as a consequence of criminalizing consensual relationships and adjusting the law in a balanced manner to protect a minor's autonomy.

An example of an adjustment to the Act that would balance the legal and emotional protection of minors would be the creation of a Romeo and Juliet clause or a close in age provision. This provision would eliminate the legal penalties associated with consensual sexual activity for close in age adolescents, as the current protective laws in place would not be placed on consensual sexual activity for peers of a similar age. With this reform, the legal system will no longer categorize sexual activities involving minors as exploitative or harmful, which will help the courts concentrate on cases of legitimate exploitation or abuse. In addition, rules of the court should be established so that the courts have clearer instructions on how to differentiate consensual relationships between adolescents from exploitative ones. These rules will help courts to better utilize the law fairly by acknowledging the age difference, the level of maturity, the voluntary consent of the participants, etc. Also, these rules should provide a range of options to the judges, since the relationships of adolescents are complex, and should not be automatically classified as a crime because of the age involved.

It is important to maintain the balance of the reforms, for the introduction of a close-in-age exception to be beneficial and to help the reforms remain safeguards against exploitation and abuse. Reform will have to maintain the core protections of the POCSO Act, and retain protections against coercion, manipulation, and exploitation, and the Romeo and Juliet exception should be narrow so these lack of protective circumstances exist. A reform strategy involving comprehensive sexual education is also recommended. Adolescents need to be taught healthy relationships, consent, and sexual rights so they can make the best decisions for themselves. Providing youth education, and equipping them with the skills to help them manage their relationships, will help lessen the risk of coercion and exploitation. This type of education should be done in schools, with parents, and in the community. Public education is also important to help reduce stereotypes about teen relationships and sexual behavior. This type of education should also cover the various aspects of teenage sexual behavior, the importance of consent, and the dangers of excessive criminalization. Even with the fear of criminalization, adolescents should be able to make choices about their relationships. A supportive and informed attitude from the community boosts these efforts.

Societal support also needs to be extended to adolescents in consensual sexual relationships. This support should include navigational relationship counseling and mental health services. Support is needed so that adolescents do not mitigate the psychological and emotional effects of legal involvement by themselves. Counseling and guidance will help adolescents know their

rights and help them understand their experiences so they can ask for help when needed. Most importantly, the changes to the POCSO Act should be accompanied by a mechanism for the ongoing assessment of the law's impact on concerns related to adolescent sexuality and consent. The law should change with the advancement of knowledge, shifts in society, and input from practitioners, policymakers, and advocates in the area of child protection. An ongoing review mechanism would help to ensure that the changes to the POCSO Act are responsive to contemporary concerns and continue to be protective of children, in a way that does not overly restrict the rights of children.
